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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA(OS) 31/2017

RAVINDER KUMAR KHANNA Appellant

Through : Mr. Jagjit Singh, Adv.

versus

PREM PRAKASH KHANNA AND ORS

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

% **16.05.2017**

Learned counsel for appellant raises and argues a limited challenge to the order dated 22nd March, 2017 as he apprehends that observations made therein could be treated as final and binding legal and factual findings. It is stated that order dated 22nd March, 2017 was ex-parte and without trial. Our attention is drawn towards paragraph 34 of the order dated 22nd March, 2017, which states that notice having not been issued to the defendants nothing in the order would bind the defendants.

Appellant herein has filed civil suit no.73/2010, Ravinder Kumar Khanna Vs. Prem Prakash Khanna & Anr. which is pending before the civil judge. This is a suit for permanent injunction and relates to property

bearing no.M-174, Greater Kailash-II, New Delhi admeasuring 300 Sq. Yards. This property is registered in the name of the defendants, Prem Prakash Khanna and Mrs. Krishna Khanna, parents of the appellant. This suit is predicated on the claim that the appellant is half or 50% owner of the property.

During the pendency of the said suit, Prem Prakash Khanna and Mrs. Krishna Khanna had executed a gift deed in favour of their daughter Ms. Anu Narula.

The appellant had filed CS (OS) No.358/2016, challenging this gift deed and to cancel the same. Execution of the gift deed is not disputed. Appellant however claims that gift deed could not have been executed for 50% of the property, he claims is owned by him and for which the appellant has filed the suit for injunction i.e. Civil Suit No.73/2010. The order dated 22nd March, 2017 holds that CS (OS) No.358/2016 is not maintainable in view of Section 52 of the Transfer of Property Act, which incorporates and enacts principle of *lis pendens*.

The order dated 22nd March, 2017 in this regard referring to the contention of the appellant and the *doctrine of lis pendens*, has observed as under:-

“As far as the first of the aforesaid two grounds pleaded is concerned, the rights of the plaintiff to half ownership of the property are to be decided not in this suit but according to the plaintiff also in the suit before the Civil Judge. Till the said rights are adjudicated and till it is held that the plaintiff is indeed the owner of half share in the property, the question of the plaintiff being entitled to have the Gift Deed set aside on the ground of defendants no.1 & 2 being not absolute owner of property and thus not competent to gift the entire property does not arise.”

It is apparent that the order dated 22nd March, 2017 does not decide the question whether or not the appellant is 50% owner of the property and whether for this reason, Prem Prakash Khanna and Mrs. Krishna Khanna could have executed the gift deed for the whole/entire property. This dispute has not been adjudicated.

We, therefore, do not see any reason to interfere with the impugned order. It is clarified that in case the impugned order is in any manner read or understood as finally determining any of the said alleged rights and claims of the appellant, then it would be open for the appellant to ask for revival of the present appeal.

The appeal is disposed of with the aforesaid observations.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

MAY 16, 2017/dk